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Chapter No. 309
16/SS26/R1006
LR / BLR

SENATE BILL NO. 2297

Originated in Senate

Erzfeld

Secretary

SENATE BILL NO. 2297

AN ACT TO AMEND SECTIONS 41-75-1, 41-75-3, 41-75-5 AND 41-75-13, MISSISSIPPI CODE OF 1972, TO DEFINE "FREESTANDING EMERGENCY ROOM" FOR THE PURPOSE OF LICENSURE BY THE STATE DEPARTMENT OF HEALTH, TO REQUIRE A LICENSE TO OPERATE AND PROVIDE PROCEDURES FOR APPLICATION; AND FOR RELATED PURPOSES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

SECTION 1. Section 41-75-1, Mississippi Code of 1972, is amended as follows:

41-75-1. For the purpose of this chapter:

(a) "Ambulatory surgical facility" means a publicly or privately owned institution that is primarily organized, constructed, renovated or otherwise established for the purpose of providing elective surgical treatment of "outpatients" whose recovery, under normal and routine circumstances, will not require "inpatient" care. The facility defined in this paragraph does not include the offices of private physicians or dentists, whether practicing individually or in groups, but does include organizations or facilities primarily engaged in that outpatient surgery, whether using the name "ambulatory surgical facility" or

a similar or different name. That organization or facility, if in any manner considered to be operated or owned by a hospital or a hospital holding, leasing or management company, either for profit or not for profit, is required to comply with all licensing agency ambulatory surgical licensure standards governing a "hospital affiliated" facility as adopted under Section 41-9-1 et seq., provided that the organization or facility does not intend to seek federal certification as an ambulatory surgical facility as provided for at 42 CFR, Parts 405 and 416. If the organization or facility is to be operated or owned by a hospital or a hospital holding, leasing or management company and intends to seek federal certification as an ambulatory facility, then the facility is considered to be "freestanding" and must comply with all licensing agency ambulatory surgical licensure standards governing a "freestanding" facility.

If the organization or facility is to be owned or operated by an entity or person other than a hospital or hospital holding, leasing or management company, then the organization or facility must comply with all licensing agency ambulatory surgical facility standards governing a "freestanding" facility.

(b) "Hospital affiliated" ambulatory surgical facility means a separate and distinct organized unit of a hospital or a building owned, leased, rented or utilized by a hospital and located in the same county in which the hospital is located, for the primary purpose of performing ambulatory surgery procedures.

The facility is not required to be separately licensed under this chapter and may operate under the hospital's license in compliance with all applicable requirements of Section 41-9-1 et seq.

(c) "Freestanding" ambulatory surgical facility means a separate and distinct facility or a separate and distinct organized unit of a hospital owned, leased, rented or utilized by a hospital or other persons for the primary purpose of performing ambulatory surgery procedures. The facility must be separately licensed as defined in this section and must comply with all licensing standards promulgated by the licensing agency under this chapter regarding a "freestanding" ambulatory surgical facility. Further, the facility must be a separate, identifiable entity and must be physically, administratively and financially independent and distinct from other operations of any other health facility, and shall maintain a separate organized medical and administrative staff. Furthermore, once licensed as a "freestanding" ambulatory surgical facility, the facility shall not become a component of any other health facility without securing a certificate of need to do that.

(d) "Ambulatory surgery" means surgical procedures that are more complex than office procedures performed under local anesthesia, but less complex than major procedures requiring prolonged postoperative monitoring and hospital care to ensure safe recovery and desirable results. General anesthesia is used in most cases. The patient must arrive at the facility and expect

to be discharged on the same day. Ambulatory surgery shall only be performed by physicians or dentists licensed to practice in the State of Mississippi.

(e) "Abortion" means the use or prescription of any instrument, medicine, drug or any other substances or device to terminate the pregnancy of a woman known to be pregnant with an intention other than to increase the probability of a live birth, to preserve the life or health of the child after live birth or to remove a dead fetus. Abortion procedures after the first trimester shall only be performed at a Level I abortion facility or an ambulatory surgical facility or hospital licensed to perform that service.

(f) "Abortion facility" means a facility operating substantially for the purpose of performing abortions and is a separate identifiable legal entity from any other health care facility. Abortions shall only be performed by physicians licensed to practice in the State of Mississippi. All physicians associated with the abortion facility must have admitting privileges at a local hospital and staff privileges to replace local hospital on-staff physicians. All physicians associated with an abortion facility must be board certified or eligible in obstetrics and gynecology, and a staff member trained in CPR shall always be present at the abortion facility when it is open. The term "abortion facility" includes physicians' offices that are used substantially for the purpose of performing abortions. An

abortion facility operates substantially for the purpose of performing abortions if any of the following conditions are met:

(i) The abortion facility is a provider for performing ten (10) or more abortion procedures per calendar month during any month of a calendar year, or one hundred (100) or more in a calendar year.

(ii) The abortion facility, if operating less than twenty (20) days per calendar month, is a provider for performing ten (10) or more abortion procedures, or performing a number of abortion procedures that would be equivalent to ten (10) procedures per month, if the facility were operating twenty (20) or more days per calendar month, in any month of a calendar year.

(iii) The abortion facility holds itself out to the public as an abortion provider by advertising by any public means, such as newspaper, telephone directory, magazine or electronic media, that it performs abortions.

(iv) The facility applies to the licensing agency for licensure as an abortion facility.

(g) "Licensing agency" means the State Department of Health.

(h) "Operating" an abortion facility means that the facility is open for any period of time during a day and has on site at the facility or on call a physician licensed to practice in the State of Mississippi available to provide abortions.

An abortion facility may apply to be licensed as a Level I facility or a Level II facility by the licensing agency. Level II abortion facilities shall be required to meet minimum standards for abortion facilities as established by the licensing agency. Level I abortion facilities shall be required to meet minimum standards for abortion facilities and minimum standards for ambulatory surgical facilities as established by the licensing agency.

Any abortion facility that begins operation after June 30, 1996, shall not be located within * * * one thousand five hundred (1,500) feet from the property on which any church, school or kindergarten is located. An abortion facility shall not be in violation of this paragraph if it is in compliance with this paragraph on the date it begins operation and the property on which a church, school or kindergarten is located * * * within * * * one thousand five hundred (1,500) feet from the facility.

(i) "Freestanding emergency room" is a facility open twenty-four (24) hours a day for the treatment of urgent and emergent medical conditions which is not located on a hospital campus. In order to be eligible for licensure under this chapter, the freestanding emergency room shall be located at least fifteen (15) miles from the nearest hospital-based emergency room in any rural community where the federal CMMS had previously designated a

rural hospital as a critical access hospital and that designation has been revoked.

SECTION 2. Section 41-75-3, Mississippi Code of 1972, is amended as follows:

41-75-3. The purpose of this chapter is to protect and promote the public welfare by providing for the development, establishment and enforcement of certain standards in the maintenance and operation of ambulatory surgical facilities and abortion facilities and freestanding emergency rooms which will ensure safe, sanitary, and reasonably adequate care of individuals in such facilities.

SECTION 3. Section 41-75-5, Mississippi Code of 1972, is amended as follows:

41-75-5. No person as defined in Section 41-7-173, of the Mississippi Code of 1972, acting severally or jointly with any other person, shall establish, conduct, operate or maintain an ambulatory surgical facility or an abortion facility or a freestanding emergency room in this state without a license under this chapter.

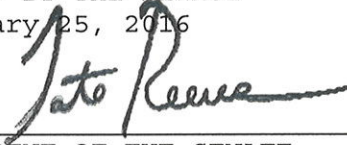
SECTION 4. Section 41-75-13, Mississippi Code of 1972, is amended as follows:

41-75-13. The licensing agency shall adopt, amend, promulgate and enforce rules, regulations and standards, including classifications, with respect to ambulatory surgical facilities and abortion facilities and freestanding emergency rooms licensed,

or which may be licensed, to further the accomplishment of the purpose of this chapter in protecting and promoting the health, safety and welfare of the public by ensuring adequate care of individuals receiving services from such facilities. The licensing agency also shall adopt, amend, promulgate and enforce rules, regulations and standards with respect to the enforcement of the informed consent requirements of Sections 41-41-31 through 41-41-39 at abortion facilities. Such rules, regulations and standards for freestanding emergency rooms shall include a patient transfer policy under which the freestanding emergency room enters into an agreement with a general hospital for a protocol for patient transfers. Such rules, regulations and standards shall be adopted and promulgated by the licensing agency in accordance with the provisions of Section 25-43-1 et seq., and shall be recorded and indexed in a book to be maintained by the licensing agency in its main office in the State of Mississippi, entitled "Rules and Regulations for Operation of Ambulatory Surgical Facilities and Abortion Facilities and Freestanding Emergency Room Facilities." The book shall be open and available to all ambulatory surgical facilities and abortion facilities and freestanding emergency rooms and the public during regular business hours.

SECTION 5. This act shall take effect and be in force from
and after July 1, 2016.

PASSED BY THE SENATE
February 25, 2016



PRESIDENT OF THE SENATE

PASSED BY THE HOUSE OF REPRESENTATIVES
March 28, 2016



SPEAKER OF THE HOUSE OF REPRESENTATIVES

APPROVED BY THE GOVERNOR



GOVERNOR

April 4, 2016
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